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March 13, 2002

William Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-B204
Washington, D.C. 20554

Re: Application by Verizon-New Jersey, Inc. for Authorization to Provide In-Region InterLATA Services in the State of New Jersey, Docket No. 01-347

Dear Mr. Caton:

In accordance with the Commission's March 8, 2002 Public Notice in the above captioned matter, please find enclosed an original and four copies of Cavalier Mid-Atlantic LLC's Supplemental Comments.

Please contact me if there is any other information that we may provide to assist the Commission in its deliberations on this matter, or if you have any questions regarding this filing.

Respectfully Submitted,

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Application of Verizon New Jersey, Inc. Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Select Services, Inc., for Authorization To Provide In-Region InterLata Services in New Jersey	))))))))))	CC Docket No. 01-347

Supplemental Comments of
Cavalier Telephone Mid-Atlantic, LLC

Pursuant to the Commission's March 8, 2002 Public Notice, Cavalier Telephone Mid Atlantic, LLC ("Cavalier") respectfully submits these supplemental comments in opposition to the application of Verizon New Jersey, Inc. to provide in-region, interLATA services in New Jersey.

Cavalier's initial comments pointed out that the essence of Cavalier's facilities-based local entry strategy requires the initial purchase of a "hot cut" from Verizon for each 2-wire loop connecting to a customer's premises.[1] Of course, to break into a new market, Cavalier must assess whether it can successfully recover its initial costs, over time, from the customer and to obtain, at some point in the foreseeable future, a reasonable profit. No doubt, if Cavalier is forced to pay (or assume) excessive up-front costs, the risks of failure will largely be a foregone conclusion. Moreover, no customer would be willing to pay a competitor a substantial upfront installation charge in order to

[1] Cavalier's Initial Comments, dated January 14, 2001..

switch local service providers. Thus, Verizon, as a direct competitor as well as the incumbent monopoly supplier, has every incentive known to basic principles of market economics to advocate for higher costs as a simple, yet highly effective, strategy to deter competition in Verizon's core markets.[2]

Cavalier's Initial Comments pointed out that Verizon's hot cut NRCs in New Jersey are seriously inflated and must stem from a failed NRC model, and that these excessive rates will surely deter Cavalier from entering, and successfully competing, in the New Jersey market for residential customers. The Commission, in this most recent Public Notice, now queries whether the New Jersey Final UNE Rate Order "demonstrates that the rates fall within the reasonable range that a correct application of TELRIC principles would produce." A review of the New Jersey UNE Rate Order ("New Jersey Order") reveals, regrettably, that the rates will continue to be out-of-bounds of any reasonable range, and will continue to seriously doom competition in New Jersey in its infancy.

The New Jersey Board's latest decision revealed a willingness to put its toe in the pond to test the water, but the Board does not complete its TELRIC delegated mission. For example, the Board rightfully had reason to doubt the validity of the Verizon NRC model, calling into question its concerns with Verizon's "interjection of many unnecessary manual steps, such as retyping orders into the processing of orders and

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[2] The Commission's decisions have long recognized the problems to competitors raised by excessive nonrecurring charges. *See, e.g.,* In the Matter of AT&T CommunicationsTariff F.C.C. Nos. 9,10, and 11 , 103 F.C.C.2d 77, 94 (1985)("It is evident that nonrecurring charges can be used as an anticompetitive weapon . . . to discourage competitors."). The Commission's rules also forbid excessive NRCs. *See* 47 C.F.R. 51.507(e)("[n]onrecrruing charges . . . shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element."). More recently, a recent U.S. District Court decision also points out the essential anticompetitive "price squeeze" created by such tactics. *See* Sprint Communications Company L.P. v. Federal Communications Comm., 274 F.3d 549 (D.C.Cir. 2001) (FCC must consider adverse market impact in 271 proceedings under its "public interest" standard).

unrealistic time estimates" and Verizon's "use of self-administered surveys, which clearly produced biased results."[3] However, instead of following the New York PSC's approach, the New Jersey Board instead went about making certain adjustments -- minor tweaks really -- to Verizon's NRC model.[4] However, the rationale employed reveals serious shortcomings that will have the greatest impact to UNE-L competitors in New Jersey, such as Cavalier.

The Commission was correct that Verizon's reliance on an out-dated and manual intensive OSS is, at best, out of step with the times, and is, at worst, thoroughly inconsistent with a forward looking methodology. Verizon invented this model, by itself and with zero input from the experience of competitors. The Commission should therefore have been highly skeptical of Verizon's self-serving use of an out-dated, cumbersome and manual intensive OSS model. An approach such as in New York would have been preferable, rather than taking the Verizon model as a *fait accompli*. The Commission chose to take a broken machine and try to fix it in pieces; a better approach would have been either to have adopted another model entirely, or to initiate a collaborative to bring in the expertise of all competitors to produce an industry-standard forward looking model, while keeping NRCs alone during the interim.

Instead, the Commission forced Verizon to eliminate from its model "all manual translation times for UNE-P orders in recognition that such manual intervention should

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[3] New Jersey UNE Rate Order at 156.

[4] The New York PSC has approved an interim installation NRC charge of $35.00 for hot cuts, in line with existing rates in many states, while it undertakes a collaborative designed to study the best way to provision and charge for hot cuts in a competitive market. Verizon's hot cut NRCs, approved in essence by the New Jersey Board's recent ruling, are set at five times these existing rates. A Hearing Officer in Delaware, in a comparable UNE rate proceeding, recently recommended the rejection of Verizon's NRC rates as incompatible with TELRIC. *See* Findings and Recommendations of the Hearing Examiner on Remand in Delaware PSC Docket No. 96-324, Phase II (2/28/92).

not be necessary in a forward looking environment."[5] The Commission, however, neglected to follow the same rationale for UNE-L orders, despite setting up this portion of its discussion with the observation that there is no reason why "two wire loop orders should be treated any different that platform orders."[6] At the very least, as with UNE-P orders, there is no justifiable reason why Verizon should be permitted to include repetitive "manual intervention" translation times in a forward looking OSS environment when undertaking the ordering process for basic two wire hot cut UNE-L orders.[7]

Thus, the New Jersey Commission's elimination of manual translation times for only UNE-P, and not UNE-L orders, is troubling and indicative of the fundamentally impossible task of working with a broken machine to try to patch it together. The New Jersey Board went about this task gamely, but the end game for a UNE-L business in New Jersey, such as Cavalier, does not look promising with NRCs basically left to the same excessive amounts proposed by Verizon. This failure will not only produce unreasonably higher NRC costs for Cavalier, but will have the further eroding effect of favoring a UNE-P entrance strategy (by lowering these NRCs) while permitting higher than necessary UNE-L NRCs.[8] Of course, beyond the inherently unfair bias associated with this choice, this preferential treatment is further directly contrary to the goal of the Telecom Act and the Commission's role in seeking to encourage more facilities-based competition through companies, such as Cavalier, that have invested capital into building

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[5] New Jersey Order at 160.

[6] New Jersey Order at 158.

[7] A "hot cut" is a simple operational step: The customer's service must be disconnected and simultaneously reconnected through a simple "cross-connect" to the CLEC's collocated facilities, with associated translation entries into Verizon's switch. The repetitive manual steps set up by Verizon for this process are incompatible in a modern software compatible industry and certainly have no place when assessing a "forward-looking" analysis.

[8] Assuming, of course, that the UNE-P NRCs will still not be excessive, even with these minor adjustments, which is still quite likely given the flawed Verizon model.

its own network and switching capacity, and not relying on the switches of the incumbent.

This particular flaw in the New Jersey Order is compounded by the similar failure to treat UNE-P orders equally with UNE-L orders in the calculation for the field installation factors. The New Jersey Board determined that no field work was required for UNE-P, because the "line is already in use."[9] Again, the same rationale should be applied to hot cut UNE-L orders. The line for a hot cut is, simply "already in use" and will, therefore, rarely require a field visit, for purposes of calculating the proper NRC wholesale rates.

Finally, the Commission got it wrong to allow Verizon to include the costs of disconnection up front when taking a CLECs order for a new customer. Simply put, a CLEC is not a "retail customer" that Verizon will have to chase down and find when the customer switches carrier, and therefore it is inappropriate for Verizon to "assume" that it will be unable to recover this cost when the service to the CLEC is terminated. Customers switch carriers all the time. That is the natural consequence of a competitive market. Hitting the CLEC for this cost up-front is disconnected entirely from the "cost" that Verizon incurs to place the order to connect the customer. The New Jersey Board's retail/wholesale comparison is off the mark and inconsistent with TELRIC principles.

For all these reasons, the New Jersey Board's recent decision will have little, if any, practical effect on the massively inflated UNE NRC charges in place in New Jersey charged to competitors that seek to enter New Jersey's residential market through a UNE-L strategy. If left alone, these rates will continue to create a barrier to entry to facilities based UNE-L competitors. The Commission should critically assess the New Jersey

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[9] New Jersey Order at 161.

Board's determinations, and should conclude as a matter of law that the NRC rates proposed will be contrary to TELRIC, and will be counter to the underlying goal of promoting local competition for all consumers in Delaware. Verizon's model that produces NRCs that are five times the average in other regional jurisdictions reveals that the model chosen by Verizon is designed in order to drive out competitors who seek to lease unbundled network elements from the incumbent LEC. This approach is thoroughly incompatible with Section 271 of the Telecmmunications Act. Therefore, Verizon's application for in region InterLATA services in New Jersey should be denied.

Respectfully submitted,

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